IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5728 OF 2007

Khandu Balu Amup ....Petitioner
V/s
Sakharam Kondaji Shinde ....Respondent.

Mr.Uday B. Nighot, Adv. For the petitioner.

Mr.T.D.Deshmukh, Adv. For the respondent.

CORAM: A.P.DESHPANDE, J.
8/8/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

The present respondent is the original plaintiff in regular civil suit No.58/98. The petitioner herein has his agricultural field adjacent to the southern boundary of the respondent's field. The respondent-plaintiff has also instituted a suit bearing No.78/01 against one Vithal and Bhau Shankar who are having their agricultural land on northern side of the agricultural field of the present respondent. It does appear that the present respondent/original plaintiff is not sure as to whether the encroachment of his land is from southern or northern side. In this fact situation the respondent moved an application for appointment of TILR for joint measurement of agricultural land owned by the petitioners so also the respondent. The petitioner's gut number is 745 wheres that of the respondent is 746. The application moved by the respondent has been allowed by the trial Court directing joint measurement. Aggrieved thereby the present writ petition has been filed. Learned counsel for the petitioner submits that joint measurement of Gut No.745 and 746 will

not resolve the dispute and will not afford definite material to the trial Court to determine the dispute inter se the plaintiff and the defendant. Learned counsel for the petitioner submits that the trial Court also need to direct the measurement of land of Vithal and Bhau Shankar who are defendant in Suit No.78/01. If the agricultural lands of the plaintiff-defendant and the said party are measured then only the joint measurement may provided the required date for the determination of the issue involved. Both the learned advocates are in agreement that the petitioner so also the respondent herein will move the trial Court seeking measurement of the land on the northern side possessed by Vithal and Bhaushankar while carrying out measurement by the -------- . I am of the view that the measurement of the gat No.745, 746 and 747 may advance the cause of justice and provide better data to decide the issue before the trial Court. I do not propose to pass an order in this petition directing measurement of the gat No.747 which is on the northern side of the agricultural land of the plaintiff as the defendants in that suit are not before this Court and are not parties to the petition. Writ petition is thus partly allowed. Petitioner and/or the respondent are permitted to move the trial Court seeking measurement of gat No.747 as well along with measurement of gat Nos.745 and 746 after due notice to the defendants in Civil Suit No.78/01. If such an application is made the trial Court shall pass appropriate order. Thus rule is made partly absolute in above terms.

8.8.07